

Message Text

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ORIGIN EB-07

INFO OCT-01 IO-13 ISO-00 TRSE-00 STR-04 SSO-00 NSCE-00

USIE-00 INRE-00 AGR-05 CEA-01 CIAE-00 COME-00 DODE-00

FRB-03 H-02 INR-07 INT-05 L-03 LAB-04 NSAE-00 NSC-05

PA-01 AID-05 CIEP-01 SS-15 ITC-01 PRS-01 SP-02

FEAE-00 OMB-01 XMB-02 OPIC-03 AF-08 ARA-06 EA-07

EUR-12 NEA-10 OIC-02 /137 R

DRAFTED BY EB/OT/STA:MCJONES:LPP

APPROVED BY EB/OT/STA:JSSPIRO

TREASURY:MGADBAW

STR:TGRAHAM

TREASURY:RMUNK/JNUNNS

TREASURY:RGORDON(SUBS)

EUR/RPE:RBRESLER(SUBS)

EUR/CAN:DBLAKEMORE(INFO)

EB/OT/GCP:SLYNN(INFO)

EB/IFD/OMA:TFORBORD(INFO)

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O R 131321Z SEP 76

FM SECSTATE WASHDC

TO USMISSION GENEVA IMMEDIATE

INFO USDEL MTN GENEVA

C O N F I D E N T I A L STATE 225496

E.O. 11652:GDS

TAGS: ETRD, GATT

SUBJECT:GATT PANELS ON DISC AND RELATED TAX PRACTICES

1. FOLLOWING IS TEXT OF LETTER DATED SEPTEMBER 10, 1976,
TO CHAIRMAN MARIADASON FROM RUSSELL L. MUNK, ASSISTANT
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GENERAL COUNSEL OF TREASURY (IN ABSENCE OF GENERAL COUNSEL

RICHARD ALBRECHT) CONTAINING US COMMENTS ON DRAFT SECTIONS
OF REPORT OF GATT PANELS ON DISC AND RELATED TAX PRACTICES.
MISSION IS REQUESTED TO PROVIDE LETTER TO MARIADASON.

BEGIN TEXT

DEAR MR. CHAIRMAN:

WE APPRECIATE THE OPPORTUNITY TO COMMENT ON DRAFTS OF
THOSE CHAPTERS OF THE GATT PANELS' REPORT ON THE DISC AND
RELATED TAX PRACTICES OF BELGIUM, FRANCE, AND THE
NETHERLANDS WHICH DESCRIBE THE VARIOUS TAX SYSTEMS AND SET
OUT THE MAIN ARGUMENTS OF THE PARTIES, AS THE PANELS
UNDERSTAND THEM. UNFORTUNATELY, WE HAVE HAD ONLY A
LIMITED AMOUNT OF TIME FOR REVIEW AND HAVE NOT BEEN ABLE TO
MAKE EXTENSIVE COMMENTS ON THE DRAFT CHAPTERS. THIS LETTER
SUMMARIZES OUR GENERAL CONCERNS AND SOME IMPORTANT FACTUAL
ERRORS IN THE DRAFT CHAPTERS. WE WILL DISPATCH SEPARATELY

FOR YOUR RECEIPT EARLY THE WEEK OF SEPTEMBER 13 A PHOTO-
COPY OF THE DRAFT CHAPTERS WITH MORE SPECIFIC COMMENTS
NOTED THEREON.

A NUMBER OF ARGUMENTS OF THE UNITED STATES ARE NOT INCLUDED
AND OTHERS HAVE BEEN TREATED TOO SUMMARILY. AS AN
EXAMPLE OF THE LATTER, AT THE BOTTOM OF PAGE 7 OF THE DISC
PANEL REPORT, ONE OF THE KEY ARGUMENTS OF THE UNITED
STATES -- THAT THE CONTRACTING PARTIES HAVE NEVER BEEN
ABLE TO AGREE WHETHER THE GATT RULES APPLY TO DEFERRAL OF
DIRECT TAXES -- IS SUMMARIZED IN ALMOST PASSING FASHION.
WHILE THE DRAFT REPORT CITES THE SECRETARIAT DOCUMENT
WHICH SUPPORTS THIS POINT, THE WORKING PARTY REPORT ADOPTED
BY THE CONTRACTING PARTIES ON NOVEMBER 19, 1960, IS THE
KEY REFERENCE SINCE IT IS THE ONLY OFFICIAL ACTION TAKEN
BY THE CONTRACTING PARTIES TO DEFINE SUBSIDIES. THE
REPORT CONTAINS A LIST OF PRACTICES WHICH ARE CONSIDERED
TO BE SUBSIDIES FOR THE PURPOSES OF ARTICLE XVI:4 AND THE
DECLARATION OF NOVEMBER 19, 1960. THE REMISSION AND
EXEMPTION OF TAXES ARE INCLUDED ON THAT LIST; THE
DEFERRAL OF TAXES IS NOT. THIS FACT SUPPORTS OUR CON-
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CLUSIONS THAT THE CONTRACTING PARTIES DO NOT CONSIDER THE
DEFERRAL OF TAXES TO BE A SUBSIDY, AND THAT NO PRE-
SUMPTION OF BI-LEVEL PRICING EXISTS WITH RESPECT TO
DEFERRAL OF TAXES. IN FAIRNESS TO OUR CASE, THESE POINTS
ABOUT THE WORKING PARTY REPORT SHOULD BE MADE AND GIVEN
A PROMINENT PLACE AT THE FRONT OF THE SECTION DISCUSSING
ARTICLE XVI:4.

IN SOME PLACES IN THE REPORT, ARGUMENTS ARE INTERRUPTED BY REBUTTALS WHILE IN OTHER PLACES REBUTTALS ARE RECAPITULATED SEPARATELY FROM THE ARGUMENTS. SINCE INTERRUPTING AN ARGUMENT WITH A REBUTTAL WEAKENS THE FORCE OF THE ARGUMENT, CARE SHOULD BE TAKEN TO INSURE THAT THE ARGUMENTS OF ALL SIDES ARE PRESENTED IN THE SAME MANNER. EITHER ALL THE REBUTTAL ARGUMENTS SHOULD BE INCLUDED AS COUNTERPOINTS TO THE OTHER SIDE'S ARGUMENT, OR ALL THE REBUTTALS SHOULD BE SUMMARIZED TOGETHER, THEREBY LEAVING THE PRESENTATION OF EACH ARGUMENT UNINTERRUPTED.

WE ARE ALSO CONCERNED ABOUT THE CONSIDERABLE EMPHASIS GIVEN THE CANADIAN ARGUMENTS IN THE REPORT. AS YOU ARE AWARE, THE GOVERNMENT OF CANADA IS NOT A PARTY TO THE DISPUTE AND OUR ACQUIESCENCE IN THE CANADIAN ORAL PRESENTATION WAS WITHOUT PREJUDICE TO THIS POSITION. THE UNITED STATES, THEREFORE, DID NOT ADDRESS ITSELF TO THE CANADIAN ARGUMENTS. FAIRNESS DICTATES THAT THE CANADIAN ARGUMENTS BE REMOVED FROM THE BODY OF THE REPORT.

THE CHAPTERS COVERING THE TAX PRACTICES OF BELGIUM, FRANCE, AND THE NETHERLANDS SHOULD BE EXPANDED TO INCLUDE QUANTITATIVE EXAMPLES, SUCH AS THOSE CONTAINED IN THE U.S. BRIEFS, SHOWING THE ACTUAL OPERATION OF THOSE TAX SYSTEMS. CONCRETELY ILLUSTRATING THE EFFECT OF THE DISC AS COMPARED TO THAT OF EACH TAX SYSTEM WOULD GIVE A MUCH CLEARER IDEA OF THE RESULTS OF THE FOUR SYSTEMS IN PRACTICE.

OUR MAIN CONCERN ABOUT THE FACTUAL PRESENTATIONS IS WITH ERRORS OF OMISSION. AN EXAMPLE OF THIS PROBLEM IS ON PAGE 1 OF THE DRAFT WHICH DEALS WITH THE LEGISLATIVE

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BACKGROUND OF THE DISC. THIS RECITATION OMITTS ANY EXPLANATION OF THE CONTEXT OR RATIONALE FOR THE DISC, WHICH IS IMPORTANT TO A CORRECT UNDERSTANDING OF OUR CASE. ANOTHER SUCH OMISSION MAY BE FOUND ON PAGE 3 IN THE FOURTH FULL PARAGRAPH WHICH REFERS TO THE EFFECTS OF THE DISC ON JOBS AND EXPORTS. THERE SHOULD BE A REFERENCE HERE TO THE FACT, POINTED OUT IN THE CITED DISC REPORT, THAT DISC HAS AN EFFECT ON IMPORTS ON THE SAME ORDER OF MAGNITUDE AS ANY EXPORT STIMULUS. THIS IS A CRITICAL POINT, BECAUSE IT TENDS TO NEGATE ANY CLAIM OF INJURY RESULTING FROM THE DISC. SIMILARLY, THE PARAGRAPH AT THE TOP OF PAGE 8 IGNORES THE FACT THAT TAX DEFERRAL IS AN ASPECT OF ANY TAX SYSTEM INsofar AS NO SYSTEM ENSURES COLLECTION OF TAXES AS INCOME ACCRUES. YOU WILL FIND A NUMBER OF COMMENTS ALONG THESE LINES IN OUR SPECIFIC

COMMENTS ON THE REPORTS.

AGAIN, LET ME THANK YOU FOR THE OPPORTUNITY TO COMMENT
ON THESE REPORTS.

SINCERELY YOURS,

RUSSELL L. MUNK
ASSISTANT GENERAL COUNSEL

MR. L. J. MARIADASON
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TEXT, TAX LAW, PUBLIC CORRESPONDENCE, TAX RELIEF
Control Number: n/a
Copy: SINGLE
Draft Date: 13 SEP 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: saccheem
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE225496
Document Source: CORE
Document Unique ID: 00
Drafter: MCJONES:LPP
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760344-1069
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760966/aaaacepc.tel
Line Count: 186
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EB
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: saccheem
Review Comment: n/a
Review Content Flags:
Review Date: 12 MAY 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <12 MAY 2004 by greeneet>; APPROVED <09 SEP 2004 by saccheem>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: GATT PANELS ON DISC AND RELATED TAX PRACTICES
TAGS: ETRD, US, GATT
To: GENEVA
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006